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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/609,986

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Max Lerman

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EXAMINER

BROWN, MICHAEL A

ART UNIT

PAPER NUMBER

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/609,986	<b>Applicant(s)</b> LERMAN, MAX	
	<b>Examiner</b> MICHAEL BROWN	<b>Art Unit</b> 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6-7, 9-10 and 17 rejected under 35 U.S.C. 102(b) as being anticipated by Gilmour '268.

Gilmour discloses in figure 1 a knee brace to be worn by a person for unloading pressure to the person's knee having first and second knee compartments, comprising an upper leg support 3, a lower leg support 4, a hinge 2, connecting the upper and lower leg supports, along only one side of the brace (fig. 1), the hinge is positionable proximate the first knee opposed compartment for permitting flexion and extension knee movement of the wearer's knee, a first knee strap 15, having first and second end portions (at 12 and 5), the first end portion of the first knee strap is attachable to the upper leg support (at 5, which is attached to 3 via 7), the first knee strap is adapted to extend above the knee (fig. 1, col. 3, lines 14-18) and wrap around the back of the knee (col. 3, lines 14-18), a second knee strap 16, having first and second end portions (at 11 and 6), the first end of portion of the second knee strap is attachable to the lower leg support (at 6, which is attached to 4, via 9), the second knee strap is adapted to extend under the knee cap (fig. 1), and wrap around the back of the knee (col. 3, lines 14-18), the second end portion of the second knee strap is attachable to the upper leg support

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(at 11), the first and second knee strap for crossing proximate the second opposed knee compartment (col. 3, lines 14-18) and providing a corrective unloading force to the first and second knee compartments of the leg, the first compartment doesn't contact the knee brace (fig. 1), means (7, 9) for aligning the hinge mechanism, the first knee compartment is a lateral knee compartment, the upper leg support 3 includes an arm 3, and the lower leg support 4, includes an arm 4, the brace applies a corrective unloading force to the person's first knee compartment and a method of applying the corrective unloading force to the first and second knee compartments, that includes the structural limitations set forth above. Note: The hinge 2 is positionable proximate the first opposed knee compartment and the first and second straps cross proximate the second opposed knee compartment. The hinge is position proximate (near, one knee compartment) and the first and second straps cross proximate (near the second knee compartment). Since no portion of the body can be claimed, where the straps are attached to the body lacks novelty over the prior art.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 8, 11-14 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilmour in view of Davis '810.

Gilmour discloses in figure 1 a knee brace, substantially as claimed. However, Gilmour doesn't disclose the hinge having a means for restricting flexion and extension movement, the pivot joint including opposing intermeshing teeth, an upper leg cuff, a lower leg cuff, the hinge mechanism being aligned with the person's forward progression by adjusting the upper and lower leg cuffs, the hinge mechanism permitting flexion and extension movement, a slot extending along the upper elongated member or a slot extending along the lower elongated member or a method that includes the upper and lower leg cuffs being adjusted. Davis teaches in figures 1-7 a hip brace comprising an upper elongated arm 22, a lower elongated arm 18, pivotably attached to each other by a pivot joint (30, 32), having intermeshing teeth 34, an upper leg cuff 6, a lower leg cuff 8 and a means 70 for restricting flexion and extension movement. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the upper and lower leg cuffs as taught by Davis could be incorporated into the knee support disclosed by Gilmour in order to assist in attaching the knee brace above and below the knee. The means for restricting flexion and extension movement as taught by Davis could be used to limit the flexion and extension movement of the user's knee. The pivotable hinge as taught by Davis could be substituted for the hinge disclosed by Gilmour because the intermeshing teeth would permit a more precision movement between the upper lower supports. The means for restricting flexion and extension movement would be incorporated into the methods to limit the flexion and extension of the knee. Davis, also teaches slots (fig. 1), along the upper and lower leg

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member which are used to adjust the upper and lower member and the upper and lower cuffs.

Claims 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims above, and further in view of Castillo.

Castillo teaches in figures 1-2 a knee brace comprising an upper and a lower leg cuff (fig. 1), and a skin adhesion layer that includes a silicone material (foam rubber). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the skin adhesion layer as taught by Castillo could be incorporated into the leg cuff as taught by Davis in order to use the skin adhesion layer to adhere the cuff to the patient's leg to prevent the cuff from slipping against the user's leg.

### ***Response to Arguments***

Applicant's arguments filed November 17, 2008 have been fully considered but they are not persuasive. Applicant argues that the straps disclosed by Gilmour aren't adapted to be attached to the knee in the same position of the knee as the strap in the present invention. However, whether the straps are attached in front or on the side or behind the knee doesn't provide any novelty over the prior art. Applicant argues that neither Davis or Castillo remedies the deficiencies of Gilmour. However, Davis was used as a modifier to provide upper and lower cuffs to attach the device to the user's knee. Castillo was used to provide a teaching of cuffs having a skin adhesion material therein. Applicant argues that hinge in Gilmour isn't positionable proximate one knee compartment while the first and second straps cross proximate a second knee

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compartment. However, the hinge was interpreted as being proximate both knee compartments. As to how the straps are attached is a function of the device.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **MICHAEL BROWN** whose telephone number is (571)272-4972. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Brown/  
Primary Examiner, Art Unit 3772